

**MINUTES
BOROUGH OF LAVALLETTE
REGULAR MEETING OF THE PLANNING BOARD**

Wednesday, December 12, 2007 - 7 P.M.

Chairman William Zylinski presiding.

Roll Call:

Vincent Marrone, Mayor LaCicero's Designee – present
William Zylinski, Chairman – present
Joseph Baginski, - Vice Chairman - present
Councilwoman Filippone – present
Christopher Parlow, Business Administrator – present
Anthony Cataline – present
Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Attorney: Terry F. Brady, Esq., Board Attorney

Public Notice Announcement:

This is the Borough of Lavallette Planning Board meeting of December 12, 2007. Adequate notice of this meeting has been given as required by Chapter 231 Public Law 1975, commonly known as "The Sunshine Law." The date, time and place of this meeting was posted on the bulletin board located in the Borough Hall, filed with the Borough Clerk, and supplied to the Ocean Star one of the official Borough newspapers.

Flag Salute:

Chairman Zylinski deferred the salute to the flag until the public portion of the meeting.

Resolutions to be Memorialized:

Application No. 5-07, Emanuel Iosue, Lessee, 1907 Grand Central Avenue, Block 20, Lot 32

Application No. 6-07, Nicholas & Christina Burdi, 800 Oceanfront, Block 9, Lot 1

Review of Minutes:

The Board reviewed the minutes of the Regular Meeting of November 28, 2007.

Old/New Business:

Mr. Palinsky asked Mr. Brady to give an explanation of a flexible C variance.

Mr. Brady responded that it is an all encompassing exception to the bulk requirements. He recited the statute from the Municipal Land Use Law and volunteered to obtain some further cases to explain it. Mr. Brady stated he had received a copy of the Report on past applications prepared by the Board Secretary and suggested they be reviewed with him at an upcoming Workshop Meeting to obtain an overview and discussion of the Land Use Standards.

Chairman Zylinski asked the Board Secretary to put this on the Agenda for the February 2008 Workshop Meeting.

Mr. Calderaro made inquiring regarding a report on the Kay's Bakery appeal.

Mr. Brady stated that he will make a report in the closed session.

Review of Cases:

Application No. 4-07 Joseph and Debra LaSala, 1 Ortley Ave., Block 1, Lot 3.01

The property is located at the north side of Ortley Avenue approximately 650 east of the intersection of NJ State Highway No. 35 northbound and contains 3,350 square feet. The site is located in Residential –A (one family) zone and contains a two-story dwelling which will remain. The applicant is proposing to cover/enclose the existing front porch and construct a second story deck above the porch, requiring the following variances: front setback 15 feet required 7.6 feet proposed; side yard setbacks 5 and 10 feet required; 4 feet proposed for the A/C unit and the additional use variance: a porch cannot have access to the roof above a porch, Section 90-24 (HO (4)©.

This application was originally on the Agenda September 26th and was carried to October 24, 2007 with all time frames waived, was then carried to November 28th and further to December 12, 2007, with all time frames waived by applicant.

Workshop portion of the meeting adjourned at 7:20 p.m.

PUBLIC MEETING: (commenced at 7:30 p.m.)

Roll call:

- Vincent Marrone, Mayor LaCicero's Designee - present
- William Zylinski, Chairman - present
- Joseph Baginski, - Vice Chairman, present
- Councilwoman Filippone - present
- Christopher Parlow, Business Administrator - present
- Anthony Cataline - present

Vincent Marino - present
Leonard Calderaro – present
Rosangela Zaccaria – present

Joseph Palinsky – present
Barbara Brown - present

Attorney: Terry F. Brady, Esq., Board Attorney

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Chairman Zylinski led the audience in the salute to the flag.

Approval of Minutes:

A motion was made by Mr. Marino, seconded by Mr. Marrone, to approve the Minutes of the November 28, 2007 meeting, with one addition. All present voting in favor.

Resolutions to be Memorialized:

Application No. 5-07, Emanuel Iosue, Lessee, 1907 Grand Central Avenue, Block 20, Lot 32

A motion was made by Mrs. Zaccaria, seconded by Mr. Palinsky to approve the Resolution granting the use variance extension of a non-conforming use subject to the following conditions: (1) approval is to allow four 42” tables with 16 chairs to be located outside of the commercial building on the Jersey City Avenue side of the property but the tables and chairs cannot extend beyond the property line or into the right of way of Jersey City Avenue. On roll call: Mrs. Zaccaria and Mr. Palinsky, yes-, Messrs. Calderaro, Marino and Cataline, yes-, Mr. Parlow, yes-, Mr. Zylinski, yes. Motion carries.

Application No. 6-07, Nicholas & Christina Burdi, 800 Oceanfront, Block 9, Lot 1

A motion was made by Mr. Marino, seconded by Mrs. Filippone to approve the Resolution granting front setback variance for 8.41 on Vance Avenue instead of 15 feet and for a waiver from Section 44-B (oceanfront construction) by constructing a porch 18.6 feet from the east property line on the oceanfront. On roll call: Mr. Marino, yes-, Mrs. Filippone, yes-, Messrs Calderaro, Cataline, yes-, Mrs. Zaccaria, yes-, and Mr. Parlow, yes. Motion carries.

Public Hearings:

Application No. 4-07 Joseph and Debra LaSala, 1 Ortlely Ave., Block 1, Lot 3.01

The property is located at the north side of Ortlely Avenue approximately 650 east of the intersection of NJ State Highway No. 35 northbound and contains 3,350 square feet. The site is located in Residential

–A (one family) zone and contains a two-story dwelling that will remain. The applicant is proposing to cover/enclose the existing front porch and construct a second story deck above the porch, requiring the following variances: front setback 15 feet required 7.6 feet proposed; side yard setbacks 5 and 10 feet required; 4 feet proposed for the A/C unit and the additional use variance: a porch cannot have access to the roof above a porch, Section 90-24 (HO (4)©.

This application was originally on the Agenda September 26th and was carried to October 24, 2007 with all time frames waived, was then carried to November 28th and further to December 12, 2007, with all time frames waived by applicant.

E. Allen MacDuffie, Esq., represented the applicant. He stated the property was purchased in 1988 it is an older bungalow type building and the applicant decided to tear it down rather than renovate. He stated that when the builder proposed plans he put in a deck and second story sliders. There is a 10 foot easement that runs on the side of the property and the lot is undersized.

Edward Liston, Esq., Toms River stated he represents the Mr. and Mrs. Powell who own the property on the west. He stated the existing house had been demolished and a new one constructed within the ordinance and believes applicant is now applying for the desired house. He stated his clients object to the application and a covered and decked porch and it will further block their ocean view and requires a “d” variance and a high standard of proof is required. He also stated that an air conditioner unit had been put within the setback under his client’s window and it was not part of the variance request.

Mr. MacDuffie interjected he would amend application to include same.

Debra LaSala, 18 Amelia St., North Caldwell, NJ was sworn in. She testified that she and her husband Joseph purchased the property in 1988 and kept it as it is until 5 years ago when they considered renovation which proved to be too expensive. The builder who does modulars added the second level; there is an easement on the property and the rear setback is greater than required because of parking.

A photo showing the subject house was introduced and marked as A-1;
A photo showing an aerial close-up of the property was marked as A-2;
A photo of mid-level aerial view of the property was marked as A-3;
A photo of aerial view of the property and Ortle Avenue was marked as A-4;
A photo of the property from the southerly view was marked as A-5.

Mrs. LaSala confirmed the photographs were of her house and there had been no change.

Mr. Liston asked Mrs. LaSala when and who took the pictures and she replied she did not know. Mr. Liston stated they did not meet the threshold for admissibility. Mr. Brady responded that for the moment they will be marked for identification purposes.

Mr. Liston cross examined Mrs. LaSala as to whether or not she contemplated a subsequent application after she built her house and she stated no but did contemplate an upstairs deck and her ultimate goal was to have a second floor porch but the Zoning Officer advised it would require a variance. Mr. Liston asked if she would be willing to move the air conditioner unit that is on the west side by her neighbor and she responded she did not know.

Mark Urgola, 402 Harding Avenue, Ortle Beach was sworn in. He stated that originally he had been

advised there could be a second floor deck but was later told there could not be a deck. He stated the modular plans did have sliders and replaced them with window and left the headers in for the sliders in case of approval.

George Hoppe, Architect and professional Planner was sworn in. Mr. Liston objected to any interpretation of the ordinance by Mr. Hoppe.

Mr. Hoppe testified as to the size of the property, the 10 foot access easement; it is a modest home other homes in area have second floor decks and he sees no substantial detriment.

Mr. Liston asked Mr. Hoppe if this required a d variance and was there a potential of blocking his client's view and Mr. Hoppe responded yes to both questions.

Joseph LaSala was sworn in and stated there was no second floor when he bought the house and he had knowledge of the easement; and he has two parking spaces in the rear of the property

Chairman Zylinski opened the meeting to the public.

No one spoke.

Chairman Zylinski closed the public portion of the meeting.

Mr. Liston summed up by stating the air conditioner is in the setback and is in violation; he stated there has been no testimony to justify the variance request and that special reasons is the most difficult to prove and referred to the Medici case. He stated that Mr. MacDuffie stated the air conditioner could be moved. He requested the air conditioner be moved and the variance be denied.

Mr. Brady asked what were the special reasons and have the negative and positive criteria been met as he does not see anything to put into an approval Resolution.

Mr. Baginski stated he does not like the idea of a porch over a deck and he has not heard an special reasons.

Mr. Parlow stated he agrees since the Ordinance was put in place so Lavallette did not have front yard living and he did not favor of the application.

A motion was made by Mr. Baginski, seconded by Mr. Parlow to deny the use and setback variance. On roll call: Messrs. Baginski, Parlow, Calderaro, Marino and Cataline, yes-, Mrs. Zaccaria, yes-, Mr. Zylinski, yes. Motion carries.

A motion was made by Mr. Parlow, seconded by Mr. Baginski for the Planning Board of the Borough of Lavallette to enter into closed session to discuss matters concerning pending litigation particularly Kay's Bakery Inc. appeal. All present voting in favor.

The Board entered closed session.

Adjourn:

On motion by Mr. Parlow, seconded by Mrs. Zaccaria, with all in favor, the meeting was adjourned at 9:50 P.M.

Respectfully submitted,

Rosemary Robertson
Secretary